

wastewater; (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent effluent concentrations than would otherwise be required by the concentration-based standards; and (3) the less concentrated influent wastewater does not result from either excessive infiltration or clear water industrial discharges during dry weather periods. The determination of whether the less concentrated wastewater results from excessive infiltration is discussed in 40 CFR 35.2005(b)(28), plus the additional criterion that either 40 gallons per capita per day (gpcd) or 1500 gallons per inch diameter per mile of sewer (gpdim) may be used as the threshold value for that portion of the dry weather base flow attributed to infiltration. If the less concentrated influent wastewater is the result of clear water industrial discharges, then the treatment works must control such discharges pursuant to 40 CFR part 403.

[49 FR 37006, Sept. 20, 1984, as amended at 50 FR 23387, June 3, 1985; 50 FR 36880, Sept. 10, 1985; 54 FR 4228, Jan. 27, 1989]

§ 133.104 Sampling and test procedures.

(a) Sampling and test procedures for pollutants listed in this part shall be in accordance with guidelines promulgated by the Administrator in 40 CFR part 136.

(b) Chemical oxygen demand (COD) or total organic carbon (TOC) may be substituted for BOD₅ when a long-term BOD:COD or BOD:TOC correlation has been demonstrated.

§ 133.105 Treatment equivalent to secondary treatment.

This section describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)) in terms of the parameters—BOD₅, SS and pH. All requirements for the specified parameters in paragraphs (a), (b) and (c) of this section shall be achieved except as provided for in § 133.103, or paragraphs (d), (e) or (f) of this section.

(a) BOD₅. (1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(b) SS. Except where SS values have been adjusted in accordance with § 133.103(c):

(1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(c) pH. The requirements of § 133.102(c) shall be met.

(d) *Alternative State requirements.* Except as limited by paragraph (f) of this section, and after notice and opportunity for public comment, the Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) of this section for trickling filter facilities and in paragraphs (a)(1) and (a)(2) of this section for waste stabilization pond facilities, to conform to the BOD₅ and SS effluent concentrations consistently achievable through proper operation and maintenance (§ 133.101(f)) by the median (50th percentile) facility in a representative sample of facilities within a State or appropriate contiguous geographical area that meet the definition of facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)).

(The information collection requirements contained in this rule have been approved by OMB and assigned control number 2040-0051.)

(e) CBOD₅ limitations:

(1) Where data are available to establish CBOD₅ limitations for a treatment works subject to this section, the NPDES permitting authority may substitute the parameter CBOD₅ for the parameter BOD₅. In §§ 133.105(a)(1), 133.105(a)(2) and 133.105(a)(3), on a case-by-case basis provided that the levels of CBOD₅ effluent quality are not less stringent than the following:

(i) The 30-day average shall not exceed 40 mg/l.

(ii) The 7-days average shall not exceed 60 mg/l.

(iii) The 30-day average percent removal shall not be less than 65 percent.

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(2) Where data are available, the parameter CBOD₅ may be used for effluent quality limitations established under paragraph (d) of this section. Where concurrent BOD effluent data are available, they must be submitted with the CBOD data as a part of the approval process outlined in paragraph (d) of this section.

(f) *Permit adjustments.* Any permit adjustment made pursuant to this part may not be any less stringent than the limitations required pursuant to § 133.105(a)–(e). Furthermore, permitting authorities shall require more stringent limitations when adjusting permits if: (1) For existing facilities the permitting authority determines that the 30-day average and 7-day average BOD₅ and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations, or

(2) For new facilities, the permitting authority determines that the 30-day average and 7-day average BOD₅ and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, considering the design capability of the treatment process and geographical and climatic conditions, would enable the treatment works to achieve more stringent limitations.

[49 FR 37006, Sept. 20, 1984; 49 FR 40405, Oct. 16, 1984]

PART 135—PRIOR NOTICE OF CITIZEN SUITS

Subpart A—Prior Notice Under the Clean Water Act

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AUTHORITY: Subpart A, issued under Sec. 505, Clean Water Act, as amended 1987; Sec. 504, Pub. L. 100-4; 101 Stat. 7 (33 U.S.C. 1365). Subpart B, issued under Sec. 1449, Safe Drinking Water Act (42 U.S.C. 300j-8).

SOURCE: 38 FR 15040, June 7, 1973, unless otherwise noted.

Subpart A—Prior Notice Under the Clean Water Act

§ 135.1 Purpose.

(a) Section 505(a)(1) of the Clean Water Act (hereinafter the Act) authorizes any person or persons having an interest which is or may be adversely affected to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. In addition, section 505(c)(3) of the Act provides that, for purposes of protecting the interests of the United States, whenever a citizen enforcement action is brought under section 505(a)(1) of the Act in a court of the United States, the Plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. Section 505(c)(3) also provides that no consent judgment shall be entered in any citizen action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(b) The purpose of this subpart is to prescribe procedures governing the giving of notice required by section 505(b) of the Act as a prerequisite to the commencing of such actions, and governing the service of complaints and proposed consent judgments as required by section 505(c)(3) of the Act.

[56 FR 11515, Mar. 19, 1991]

§ 135.2 Service of notice.

(a) Notice of intent to file suit pursuant to section 505(a)(1) of the Act shall be served upon an alleged violator of an effluent standard or limitation under the Act, or an order issued by the Administrator or a State with respect to such a standard or limitation, in the following manner:

(1) If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail